

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CODY HART, DERRILL FUSSELL,
KEVIN EWING, TIMOTHY
GARRISON, STEVEN RINDAL, and
KATHY LAFRENIERE,

Plaintiffs,

v.

SKAGIT COUNTY SHERIFF
DONALD MCDERMOTT, SKAGIT
COUNTY PROSECUTING
ATTORNEY RICHARD WEYRICH,
COUNTY OF SKAGIT, and RLI
INSURANCE COMPANY,

Defendants.

CASE NO. C23-503

ORDER DENYING MOTION TO
RECUSE

This matter comes before the Court on Plaintiffs' Motion to Recuse. (Dkt. No. 17.)

Having reviewed the Motion and the relevant record, the Court DENIES the Motion.

“[I]n the absence of a legitimate reason to recuse himself, ‘a judge should participate in cases assigned.’” United States v. Holland, 519 F.3d 909, 912 (9th Cir. 2008) (quoting Maier v.

1 Orr, 758 F.2d 1578, 1583 (Fed. Cir. 1985)). But “a judge may not sit in cases in which his
2 ‘impartiality might reasonably be questioned.’” Id. (quoting 28 U.S.C. § 455(a)). “If it is a close
3 case, the balance tips in favor of recusal.” Id.

4 Plaintiffs rely on 28 U.S.C. § 455(a) for their position. Section 455(a) states that “[a]ny
5 justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding
6 in which his impartiality might reasonably be questioned.” The substantive standard for recusal
7 under Section 455 is “whether a reasonable person with knowledge of all the facts would
8 conclude that the judge’s impartiality might reasonably be questioned.” United States v.
9 Hernandez, 109 F.3d 1450, 1453 (9th Cir. 1997) (quoting United States v. Studley, 783 F.2d 934,
10 9349 (9th Cir. 1986)). Ordinarily, the alleged bias must stem from an “extrajudicial source.”
11 Liteky v. United States, 510 U.S. 540, 554-56 (1994).

12 The Court is not convinced that recusal is appropriate. Plaintiffs seek recusal given the
13 Court’s knowledge and involvement in another matter filed by Plaintiffs. (See Affidavit to
14 Motion to Recuse at 1 (Dkt. No. 32-1) (citing the Court’s involvement in Hart v. Wesen, 2:23-
15 cv-309.) First, Plaintiffs allege that the Court’s ruling in favor of the defendants in the other
16 matter shows “undeniable bias and prejudice.” (Affidavit at 1.) The Court previously issued an
17 order dismissing the case for lack of standing in Hart v. Wesen. But, ruling one way on a related
18 case does not represent bias on an issue presented in another case. And Plaintiffs fail to point to
19 any extrajudicial source to establish bias in their current case.

20 Second, Plaintiffs seek recusal on the theory that “Judge Pechman has personal
21 knowledge of disputed evidentiary facts concerning the proceedings in which evidence has been
22 referenced and now introduced as mandatory judicial notice.” (Affidavit at 1.) This appears to be
23 in reference to 28 U.S.C. § 455(b), which provides: “[A judge] shall also disqualify himself in
24

1 the following circumstances: (1) Where he has . . . personal knowledge of disputed evidentiary
2 facts concerning the proceeding.” Again, Plaintiffs’ assertion fails as there is no basis to
3 conclude that the Court has any “personal knowledge” of the facts presented in the present case
4 by its mere oversight of Plaintiffs’ other cases.

5 Lastly, Plaintiffs claim that Judge Pechman will be subpoenaed as a witness to testify to
6 alleged crimes that were committed before her. (Motion at 2.) Plaintiffs allege that Defense
7 Attorney Erik Pedersen committed a crime because he was not lawfully authorized to represent
8 the defendants in the other cases before the Court. (Affidavit at 1.) No evidence has been
9 submitted to sustain this claim and Plaintiffs’ mere belief that a crime has been committed does
10 not warrant recusal. For these reasons, the Court DENIES the Motion to Recuse.

11 In accordance with the Local Rules, this matter is referred to U.S. Chief District Judge
12 David G. Estudillo for review of Plaintiffs’ recusal request and this Court’s denial of that
13 request.

14 The clerk is ordered to provide copies of this order to all counsel.

15 Dated July 19, 2023.

16 

17 Marsha J. Pechman
18 United States Senior District Judge
19
20
21
22
23
24